IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. NO.4119 OF 2006
DATE OF DECISION: 21-08-2007

Harbhajan Kaur

.....PETITIONER

VERSUS

Surjit Singh @ Jit Singh and others

.....RESPONDENTS

CORAM:- **HON'BLE MR.JUSTICE HEMANT GUPTA**

PRESENT: Mr. KS Cheema, Advocate
for the petitioner.

Mr. BR Mahajan, Advocate
for respondent No.1.

HEMANT GUPTA, J.(Oral)

The challenge in the present revision petition is to the order passed by the learned trial Court on 06-06-2006 whereby the plaintiff was allowed to amend the plaint so as to incorporate the plea about the execution of the Will by Bhagat Singh in favour of Mangal Singh and Jit Singh on 20-12-1959.

The said order is challenged by the defendants before this Court on the ground that earlier, defendant No.1 has filed a suit for declaration in which the present plaintiff was impleaded as defendant No.7. In the said suit, the defendants have relied upon the Will dated 20-12-1959 but the suit was decreed by the trial Court on 21-08-2000. The said judgment and decree has attained the finality with the decision of the first

appeal, second appeal and by the dismissal of the Special Leave Petition by the Hon'ble Supreme Court on 04-10-2002. Therefore, the amendment sought by the plaintiff in respect of Will dated 20-12-1959 is nothing but an abuse of the process of law.

The sole argument raised by the learned counsel for the respondent-plaintiff is that the present suit has been filed before the decision of the Special Leave Petition by the Hon'ble Supreme Court on 25-01-2001 and the Will dated 20-12-1959 was not the subject matter of dispute in the previous proceedings.

In the previous suit, the dispute was regarding estate of Mangal Singh. The plaintiff relied upon the said Will to claim the estate of Mangal Singh to exclude Guro, who is the nearest heir of Mangal Singh. Since in the previous suit, Guro has been found to be the nearest heir of Mangal Singh, therefore, reliance on the Will now sought to be incorporated to claim the estate of Mangal Singh is nothing but an abuse of the process of law. Such plea was available and in fact raised. Mere fact that no issue was framed, is not material as the parties have undergone trial regarding estate of Mangal Singh on the basis of Will dated 20-12-1959 as well. The issue adjudicated in the suit is regarding the estate of Mangal Singh. The said issue cannot be permitted to be reopened again by filing the present suit.

Consequently, the order passed by the learned trial Court allowing the amendment in the plaint to incorporate the plea of Will by Bhagat Singh in favour of Mangal Singh and Jit Singh, suffers from illegality and irregularity and cannot be sustained. The said amendment in fact would permit the plaintiff to reopen the issues, which have attained the finality. Therefore, the revision petition is allowed and the order passed by

the learned trial Court dated 06-06-2006 is set aside.

The learned trial Court is also directed to examine the question whether the plaintiff has any cause of action in terms of Order 7 Rule 11 of the Code of Civil Procedure.

(HEMANT GUPTA)
JUDGE

August 21, 2007
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